

UNITED STATES. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RON FELDMAN,

Plaintiff,

- against -

UNITED PARCEL SERVICE, INC., GARY WEISS, INC.
AND GARY WEISS,

Defendants.
-----X

Index No. 06 CV 2490

VERIFIED ANSWER

Defendant, UNITED PARCEL SERVICE, INC. ("UPS"), by its attorneys, DLA Piper Rudnick Gray Cary US LLP, as and for its Verified Answer to the Verified Complaint of Ron Feldman ("**Feldman**"), states and alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Verified Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Verified Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Verified Complaint.
4. Denies the allegations contained in paragraph "4" of the Verified Complaint, and states that UPS is an Ohio corporation.
5. Admits the allegations contained in paragraph "5" of the Verified Complaint, to the extent that UPS is an Ohio corporation which conducts business in New York.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Verified Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Verified Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Verified Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the Verified Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Verified Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Verified Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Verified Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Verified Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Verified Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Verified Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Verified Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the Verified Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the Verified Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Verified Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the Verified Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Verified Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Verified Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Verified Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of the Verified Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the Verified Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the Verified Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the Verified Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Verified Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the Verified Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “30” of the Verified Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Verified Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Verified Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the Verified Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of the Verified Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of the Verified Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “36” of the Verified Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph “37” of the Verified Complaint, except admits that UPS operates a Customer Counter, located at 3800 NW 16th Street, Ft. Lauderdale, Florida, which accepts packages for shipments via UPS.

38. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “38” of the Verified Complaint, except admits that UPS’s records indicate that Plaintiff tendered a package for shipment on February 22, 2005 at the UPS Customer Counter located at 3800 NY 16th Street, Ft. Lauderdale, Florida.

39. Denies the allegations contained in paragraph “39” of the Verified Complaint, except admits that Plaintiff declared a value for the package of \$50,000 and paid additional shipping charges consistent with the value he declared.

40. Denies the allegations contained in paragraph “40” of the Verified Complaint.

41. Denies the allegations contained in paragraph “41” of the Verified Complaint, except admits that Plaintiff declared a value for the shipment and paid an additional charge to increase UPS’s limitations of liability for the loss or damage to the package, subject to the UPS Tariff and the terms and conditions of service.

42. Admits the allegations contained in paragraph “42” of the Verified Complaint to the extent that Plaintiff paid the shipping charges on a UPS package bearing UPS tracking number 1Z361X361387020631.

43. Admits the allegations contained in paragraph “43” of the Verified Complaint.

44. Admits the allegations contained in paragraph “44” of the Verified Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Verified Complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Verified Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “47” of the Verified Complaint.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “48” of the Verified Complaint.

49. Denies the allegations contained in paragraph “49” of the Verified Complaint, and refers questions of law to the Court.

ANSWERING THE FIRST CAUSE OF ACTION

50. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “50” of the Verified Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “51” of the Verified Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “52” of the Verified Complaint.

53. Denies the allegations contained in paragraph “53” of the Verified Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “54” of the Verified Complaint.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “55” of the Verified Complaint.

56. Denies the allegations contained in paragraph “56” of the Verified Complaint.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “57” of the Verified Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “58” of the Verified Complaint.

59. Denies the allegations contained in paragraph “59” of the Verified Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “60 of the Verified Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “61” of the Verified Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “62” of the Verified Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “63” of the Verified Complaint.

64. Denies the allegations contained in paragraph “64” of the Verified Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “65” of the Verified Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Verified Complaint.

67. Denies the allegations contained in paragraph “67” of the Verified Complaint.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “68” of the Verified Complaint.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “69” of the Verified Complaint.

70. Denies the allegations contained in paragraph “70” of the Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

71. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “71” of the Verified Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “72” of the Verified Complaint.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “73” of the Verified Complaint.

74. Denies the allegations contained in paragraph “74” of the Verified Complaint.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “75” of the Verified Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “76” of the Verified Complaint.

77. Denies the allegations contained in paragraph “77” of the Verified Complaint.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “78” of the Verified Complaint.

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “79” of the Verified Complaint.

80. Denies the allegations contained in paragraph “80” of the Verified Complaint.

81. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “81” of the Verified Complaint.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “82” of the Verified Complaint.

83. Denies the allegations contained in paragraph “83” of the Verified Complaint.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “84” of the Verified Complaint.

85. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “85” of the Verified Complaint.

86. Denies the allegations contained in paragraph “86” of the Verified Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

87. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “87” of the Verified Complaint.

88. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “88” of the Verified Complaint.

89. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “89” of the Verified Complaint.

90. Denies the allegations contained in paragraph “90” of the Verified Complaint.

91. Denies the allegations contained in paragraph “91” of the Verified Complaint to the extent they are directed against UPS, but makes no answer as to those allegations made against the other Defendants.

92. Denies the allegations contained in paragraph “92” of the Verified Complaint to the extent they are directed against UPS, but makes no answer as to those allegations made against the other Defendants.

ANSWERING THE FOURTH CAUSE OF ACTION

93. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “93” of the Verified Complaint.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “94” of the Verified Complaint.

95. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “95” of the Verified Complaint.

96. Denies the allegations contained in paragraph “96” of the Verified Complaint and refers questions of law to the Court.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “97” of the Verified Complaint.

98. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “98” of the Verified Complaint.

99. Denies the allegations contained in paragraph “99” of the Verified Complaint.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “100” of the Verified Complaint.

101. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “101” of the Verified Complaint.

102. Denies the allegations contained in paragraph “102” of the Verified Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION

103. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “103” of the Verified Complaint.

104. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “104” of the Verified Complaint.

105. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “105” of the Verified Complaint.

106. Denies the allegations contained in paragraph “106” of the Verified Complaint.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “107” of the Verified Complaint.

108. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “108” of the Verified Complaint.

109. Denies the allegations contained in paragraph “109” of the Verified Complaint.

ANSWERING THE SIXTH CAUSE OF ACTION

110. UPS repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph “110” of the Verified Complaint.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “111” of the Verified Complaint.

112. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “112” of the Verified Complaint.

113. Denies the allegations contained in paragraph “113” of the Verified Complaint.

114. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “114” of the Verified Complaint.

115. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “115” of the Verified Complaint.

116. Denies the allegations contained in paragraph “116” of the Verified Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
DEFENDANT STATES:

117. The Verified Complaint or causes of action stated therein fail to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
DEFENDANT STATES:

118. Plaintiff fails to state with sufficient particularity the elements necessary for a cause of action against UPS. Specifically, Plaintiff fails to allege that UPS breached an agreement with Plaintiff and that such breach caused Plaintiff’s alleged damages. Furthermore, Plaintiff cites no language from any alleged agreement with UPS which allegedly establishes the parties’ rights and obligations. And assuming a valid agreement exists between Plaintiff and UPS, Plaintiff fails to allege the manner in which UPS allegedly breached this agreement and the terms and conditions of this agreement.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
DEFENDANT STATES:

119. That any damages sustained by Plaintiff, as alleged in the Verified Complaint herein, were caused in whole or in part by the contributory and/or culpable conduct of said Plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of UPS.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

120. Any loss suffered by the Plaintiff herein was caused by the acts of others whom UPS did not control.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

121. Pursuant to governing law, regulations, and the contract documents containing the terms and conditions of the transportation of property (including the applicable shipping documents, the UPS General Tariff, and UPS Rate and Service Guide), UPS is not liable for loss of or damage to items that UPS does not accept or that shippers are prohibited from shipping, including Articles of Unusual Value as defined in UPS Tariff Item 460.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

122. Some of all of Plaintiff's causes of action are preempted by, *inter alia*, the federal common law governing an air carrier's liability for transporting property.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

123. Some of all of Plaintiff's causes of action are preempted by, *inter alia*, the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. §§ 14501(c)(1) & 41713(b)(4)(A). Plaintiff's prayer for punitive damages is preempted by the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. §§ 14501©(1) & 41713(b)(4)(A).

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

124. Pursuant to governing law, regulations, and the contract documents containing the terms and conditions of the transportation of property (including the applicable shipping documents, the UPS General Tariff, and the UPS Rate and Service

Guide), plaintiff's recovery, if any, is limited to a maximum of the released or declared value of the subject shipment.

WHEREFORE, Defendant, UNITED PARCEL SERVICE, INC., respectively requests that the Court:

- a) dismiss the Verified Complaint with prejudice and in its entirety;
- b) order Plaintiff to pay UPS its costs and disbursements in this action, including reasonable attorneys' fees; and
- c) grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 3, 2006

By: 

Stephen P. McLaughlin, Esq. (SM4136)
DLA Piper Rudnick Gray Cary US LLP
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: (212) 835-6000
Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

TO:

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Attorneys for Plaintiff

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

KENYOUTH ERNANDEZ, being duly sworn, deposes and says: I am over the age of 18 years and not a party to this action. On the 3rd day of April, 2006, I caused to be served the annexed **VERIFIED ANSWER** on the following: via UPS Next Day Air

Jonathan E. Roberts
Talkin, Muccigrosso & Roberts, LLP
40 Exchange Place, Suite 1800
New York, New York 10005
(212) 482-0007

GARY WEISS, INC.
570 5th Avenue
New York, New York 10036

GARY WEISS, INC.
578 5th Avenue
New York, New York 10036

GARY WEISS
c/o Gary Weiss, Inc.
570 5th Avenue
New York, New York 10036

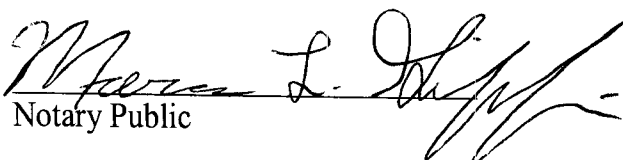
GARY WEISS
c/o Gary Weiss, Inc.
578 5th Avenue
New York, New York 10036

the address designated by them for that purpose.



KENYOUTH ERNANDEZ

Sworn to before me this
3rd day of April, 2006



Notary Public

MARCUS L. GRIFFIN
Notary Public, State of New York
No. 02GR5062272
Qualified in New York County
Commission Expires June 24, 2008